

**THE HON'BLE SRI JUSTICE P.S.NARAYANA**

**W.P.No.25798 of 2006**

**Dated: 16.11.2007**

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Between:

Y. Venkateswara Rao.

..Petitioner.

and

The Singareni Collieries Company Ltd., Head Office, Kothagudem,  
Khammam district, rep. by its Managing Director and others.

..Respondents.

**THE HON'BLE SRI JUSTICE P.S.NARAYANA**

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**W.P.No.25798 of 2006**

**ORDER:**

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This writ petition is filed for a writ of mandamus or any other appropriate writ declaring the proceedings No.CRP/PER/IR/D/92/1110 dated 19.06.2004 and another proceedings No.CRP/PER/IR/D/90/892 dated 17.06.2005, as illegal and arbitrary, and consequently set aside the same and release all the consequential benefits and to pass such other suitable orders.

2. Sri G. Vidya Sagar, learned counsel for the writ petitioner had taken this Court through the respective stand taken by the parties and would maintain that even on a glance of the order impugned, it is clear that there is total non-application of mind since the grounds raised by the writ petitioner had not been considered. The counsel also placed strong reliance on **N. MUKHERJEE v. UNION OF INDIA**[\[1\]](#).

3. On the contrary, Sri Nandigam Krishna Rao had taken this Court through the contents of the counter-affidavit and would maintain that as can be seen from the facts of the case, in substance, the appellate authority also had considered the questions involved and hence, the writ petition deserves dismissal.

4. Heard the counsel.

5. The petitioner was appointed as Grade-II Clerk on 22.02.1983 and posted to Main Stores. On 11.09.1999 he was given Special Grade Clerk, vide office order, dated 22.12.2000. He was made in charge of Electrical Section. It is stated that from the date of appointment, he had been discharging his duties to the entire satisfaction of his superiors. It is further stated that while he was working as incharge of Electrical Section, he received letter from Yellandu for the issue of bearings on 13/14-5-2002 and when he verified and found that there is shortage of 6313 bearings and the same had been brought to the notice of Sri N. Bosu Babu, Storekeeper on 16.05.2002. It is further stated that the storekeeper advised the petitioner for verification of the entire bearings in the stores and thereafter, verification was done with the help of

G. Srinivasa Rao, Worker, Main Stores. Since he found shortage of bearings, he brought the same to the notice of the Deputy General Manager (Main Stores) that there is a shortage of bearings. It is further stated that while the verification was about to complete, he received letter from the General Manager (Stores) with regard to physical verification of stocks of classes 7 and 55 of Electrical Section as on 31.05.2002. Basing on the physical verification done by him, he submitted report to the Deputy Chief Engineer (MS) on 08.06.2002 stating that there is a shortage of bearings and that

J. Ramesh, Issue Mazdoor of Electrical Section is responsible for the theft committed since he is holding Section keys in his

absence. Thereafter, Sri J. Ramesh had been issued with charge sheet and an enquiry was also concluded.

It is further stated by the petitioner that while so, he had been issued with charge sheet dated 21.01.2003 that he had given report on 08.06.2002 informing that there is shortage of 79 numbers bearings pertaining to 13 different items, whose value is about Rs.93,357.33 and that he is responsible for the loss of bearings, which amounts to misconduct under Company's Standing Order No.25 (2). It is further stated that he is not responsible for the alleged loss of bearings and he had already brought to the notice of the Storekeeper as well as the Deputy General Manager (E&M), Main Stores with regard to the shortage of items on 13.05.2002 itself. Having not satisfied with the explanation submitted by him, the respondent appointed Sri Ch.V. Ramana, Sr. P.O. as Enquiry Officer. It is further submitted that in the enquiry 5 persons have been examined from the Management side, namely Sri

M. Satyanarayana, Dy. G.M. (E) as Presenting Officer; Sri N. Bose Babu, Store Keeper, Main Stores; Sri S. Laxman Rao, Dy.S.E. Main Stores; Sri K. Wilson Christopher, Spl. Gr. Clerk, Main Stores and Sri B.L.V.V.Raghavulu, Dy. S.E., Main Stores; To defend his case, the petitioner himself was examined and on his behalf three others have been examined, namely Sri G. Srinivasa Rao; Sri B.V. Narayana and Sri Vanama Nageshwara Rao, Organising Secretary, S.C. Employees Union. In the cross-examination of the Presenting Officer, he stated that whenever the Section Clerk goes on leave, the Dy. General Manager (Stores) will decide the person to look after the Section as is being done in other Section and that he had informed to the Storekeeper, who is

the immediate superior to him, as soon as petitioner found shortage of bearings on 13.05.2002. Further it is averred that in the cross-examination Sri N. Bosu Babu had stated that he informed to Sri Prakash Rao, Deputy General Manager with regard to shortage on 29.05.2002 and that in the audit report depending on the gravity of variation of items (stocks/shortage) after getting the explanation from the concerned clerk, the Head of the Department will decide the action to be taken, he also stated that in the list of loss items of varieties, one type of material may be found excess and another items may be less, aggregate excess or shortage of varieties in the said class, then total shortage is meager or zero. He also stated in his cross-examination that every year in audit they were noticed some sort of shortages and based on explanation of concerned clerk, Head of Department will take action; and the petitioner categorically stated in his statement in the enquiry that he himself reported to the Deputy Chief Engineer (MS) with regard to shortage of items and also stated that Sri J. Ramesh, Stores Mazdoor is responsible for the alleged loss of bearings. However, without considering the evidence, the enquiry was concluded and the enquiry report submitted holding that the charges leveled against him are proved. Further, it is stated that basing on the finding of the Enquiry Officer, he was furnished with the enquiry report and also directed him to submit representation to the enquiry officer. Accordingly, he submitted his representation on 15.12.2003. Thereafter, final orders have been passed by the Director on 19.06.2004 imposing the punishment of reverting to lower stage by reducing two increments in the present scale of pay with effect from 01.06.2004 and also decided to recover the amount of Rs.93,357.33 from his salary and from the salary of Sri

J. Ramesh, General Manager. Thereafter, he preferred an appeal to the Chairman & Managing Director on 02.08.2004 and the same had been rejected on 17.06.2005 without assigning any reasons.

It is stated that the disciplinary authority had not followed the procedure while conducting the enquiry and when there are more than one employee is involved in the charges incident, a common enquiry has to be conducted into the alleged charges. However, no common enquiry is conducted. Further, it is stated that the disciplinary authority and the appellate authority failed to see that the petitioner was imposed double punishment for the single incident i.e., recovery of Rs.46,678/- from the salary of the petitioner and also reversion to lower stage by reducing two increments in the present scale w.e.f 01.06.2004 which is nothing but double jeopardy. Further, it is stated that the appellate authority failed to see that after expiry of leave, the petitioner did verification of stock and submitted report with regard to the shortages to the Deputy General Manager. Therefore, the allegation made against the petitioner is wholly illegal and baseless. The appellate authority failed to see that the Enquiry Officer held that the charges are proved only on the basis of evidence of MW.1 to MW 5 and material evidence of ME 1 to ME 3. However, his defence evidence was not taken into consideration by the Enquiry Officer, which is wholly misconceived. Further, it is stated that the appellate authority failed to see that the charge sheet dated 08.06.2004 was issued to Mr. Ramesh and enquiry was conducted and the charges held proved against Mr. Ramesh. For the same subject matter, petitioner had been issued with separate charge sheet and conducted separate enquiry. Therefore, the enquiry self is void

and abinitio. Further, certain grounds had been raised that the appellate authority had not followed the procedure and relied upon the reliance cited (1) supra.

6. In the counter affidavit, which is sworn to by the Chief General Manager, Personnel of the respondent company, it is stated that the petitioner is a workman coming within the definition of 'workman' under the Industrial Disputes Act, 1947 and hence, he had an efficacious, effective and alternative remedy for the redressal of his grievance and hence, he cannot approach this Court under Article 226 of the Constitution of India. It is also stated that the respondent company is a coal mining industry which is engaged in exploration, extraction, excavation and mining of coal in four districts of Andhra Pradesh namely, Khammam, Karimnagar, Adilabad and Warangal districts. It employees, nearly about 78,000, which includes Executives, supervisors and other category of employees and workmen to carryout its mining activities and to achieve the target of coal production to the tune of 40 million tones per year for meeting the requirements of coal to various industries like power, cement, steel, paper etc., in the southern part of India. Out of those employees, the clerical staff have to perform a crucial job in discharging their duties with utmost integrity, sincerity and honesty and the trust reposed in them is to be of very high level in the respondent company. It is further stated that the petitioner was appointed as Grade-II clerk on 22.02.1983 and posted to work at Main Stores, Kothagudem. He was promoted as Special Grade Clerk and confirmed in the post w.e.f. 01.03.1998. The petitioner was posted as incharge of the Electrical Section of the Main Stores w.e.f 01.01.2001. In reply

to paras 4 & 5 it is averred in para 7 that while the petitioner was working as incharge of electrical section, a requisition had come from Yellandu Area on 13.05.2002 for issue of 6313 number bearings on which date the Bin card shows a balance quantity of 10 nos. bearings. When the petitioner wanted to issue the bearings there was no physical stock, though as per Bin card the stock is 10 numbers. As such, the petitioner himself conducted verification of physical stock of all varieties of bearings and found that 13 varieties of bearings totaling to 79 were missing. It is stated that the petitioner being incharge of the section is directly responsible for stocks of materials in the section and he is the custodian of all material in the section, documentary work, receipt and issue of materials and verification etc., After issue of material, the stock balance as per the bin card and the physical stock will be tallied and signed by the concerned incharge clerk as the bin card as a token of certification and responsible for maintenance of the balance of physical stock. Hence, the petitioner failed to discharge his duties and there was lack of concentration and care in maintenance of stock of the material in the Electrical Section by the petitioner during the period he worked as incharge clerk and responsible for loss of 13 varieties of bearings numbering 79. It is further averred that the concerned incharge clerk shall after receipt of the material from the receipt section, verify and receive the material as per IRN, post the same in the bin card, keep the material as per code number and description in the respective racks and maintain the stock. It is further averred that he is responsible for maintenance of the balance of physical stock of the material as per the bin card after every issue of material and after day to day routine transaction. Whenever user approaches

to take any material, the section clerk will identify the material as per the code number, item description and locates the same. Section clerk can identify all the material in their section for which no technical knowledge is required for the same. If any problem is faced to them in identification of any rare item they will seek advise/guidance of their superiors. Hence, he was issued charge sheet vide proceedings dated 21-1-2003 for missing of 79 bearings under Company's Standing Order No.25.5 which reads as follows:

“25(5): Neglect of work”.

It is further averred that the petitioner submitted explanation vide his letter dated 14-2-2003. As the explanation submitted by the petitioner was found not satisfactory, domestic enquiry was ordered. The petitioner has attended the enquiry and fully participated in the enquiry proceedings. The petitioner was given full and fair opportunity to defend his case. Four witnesses were examined on behalf of management and two witnesses were examined on behalf of the petitioner. After completion of domestic enquiry, the enquiry officer submitted his report with a finding that the charges levelled against the petitioner were proved. Further, the petitioner was supplied with a copy of enquiry proceedings and enquiry report vide letter dated 8-12-2003 to enable him to make representation, if any, against the findings of the enquiry officer. The petitioner submitted representation dated 15-12-2003 on the report of enquiry officer. The disciplinary authority had examined the representation, report of the enquiry officer and all the connected material and concurred with the findings of the enquiry officer. Further, the disciplinary authority had imposed a penalty of reversion to a lower stage by reducing 2 increments with cumulative effective and recovery of Rs.46,678.67 ps being half of

the loss caused to the respondent company. It is stated that the disciplinary authority decided to recover the balance amount of Rs.46,678.67 ps. from Sri Jeedi Ramesh, General Mazdoor, Main Stores, as he is also responsible for the loss caused to the respondent company. The allegation of the petitioner that basing on the physical verification done by him, he submitted report to the Deputy Chief Engineer (MS) stating that J.Ramesh, Issue Mazdoor of electrical section is responsible for the theft committed since he is holding section keys in his absence, is denied. It is stated that the petitioner being incharge of section is responsible for receipt/issue/stock of the material and proper maintenance of the relevant records.

It is stated that with regard to the allegation of the petitioner that in the cross-examination N. Bosu Babu has stated that he informed the Deputy General Manager with regard to shortage on 29.05.2002 and that in the audit report depending on the gravity of variation of items, after getting the explanation from the concerned clerk, the head of the department will decide the action to be taken and the list of loss of items of varieties, one type of material may found excess and another item may be less, aggregate excess or shortage of varieties in the said class, then the total shortage is meager or zero. It is stated that the shortages in the present case cannot be compared with the other shortages found in the yearly audit. In the yearly audit, some shortages or excess are common. If one material is found excess and another material of similar nature, may be found in shortage, thus the net shortage or excess of that particular class will be meager or negligible. However, in the present case no excess material was found but there is only a shortage. It is also averred that it is a fact that the petitioner filed

appeal to the Chairman & Managing Director on 02.08.2004 against the imposition of penalty. The allegation of the petitioner that his appeal has been rejected without assigning any reason is denied. It is stated that from the order passed by the appellate authority, it is clear that the appellate authority had gone through the appeal of the petitioner, enquiry report and enquiry proceedings and after examining all the past records of the petitioner found that there are no extenuating circumstances to reduce the penalty imposed on the petitioner and as such confirmed the penalty of reversion to a lower stage by reducing two increments with cumulative effect and recovery of Rs.46,678.67 ps passed by the disciplinary authority. It is stated that the enquiry officer conducted the domestic enquiry following the principles of natural justice. Further, the petitioner has fully participated in the domestic enquiry. The allegation of the petitioner that the disciplinary authority had not followed the procedure while conducting the enquiry is false. It is stated that a common enquiry need not be conducted even though charges are similar. Further allegation that the disciplinary authority and appellate authority failed to see that the petitioner was imposed double punishment is denied. It is stated that imposition of penalty of reversion to a lower stage by reducing two increments and recovery of the loss caused cannot be treated as double punishment. Further, it is averred that with regard to the allegation that the petitioner after expiry of leave, conducted verification of stock and submitted report stating that J. Ramesh is responsible for the theft committed and stated that mere verification and reporting of shortage does not dissolve the petitioner from the charges as he is the responsible person and incharge of that

electrical section. Further, it is stated that the enquiry officer had taken all the aspects of evidence and record produced before him and submitted enquiry report. The allegation that the enquiry officer held that the charges are proved only on the basis of evidence MW1 and material evidence ME-1 to ME-3 is denied. The enquiry officer has taken the evidence of all the witnesses into consideration and submitted the enquiry report. The allegation of the petitioner that the appellate authority failed to see that the charge sheet dated 08.06.2004 was issued to Mr. Ramesh and enquiry was conducted and charges held proved against Mr. Ramesh, is denied. It is stated that though the charges framed against Mr. Ramesh are proved, that does not dissolve the petitioner from the charges framed against him. Further, the allegation that the appellate authority ought to have seen that the charge is trivial in nature, therefore the punishment grossly disproportionate to the gravity of the charges is denied. It is settled position that the disciplinary authority, and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are vested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. It is further averred that the respondent Company had been declared as Public Utility Service by Government of India under the provisions of Industrial Disputes Act, 1947. The petitioner had been working in the office and to perform his duties in the day to day activities of administration and he is one of the important employees of the respondent company. He holds a position of trust where honesty and integrity in built requirements of functioning for the nature of his duties which involved with

public money for which a high degree of integrity, trustworthiness is must and unexceptionable. Further, specific stand had been taken that disciplinary authority had taken a lenient view and imposed punishment of reversion to the lower stage and recovery of Rs.46,678.67ps taking the past service rendered by the petitioner and the same is justifiable.

7. The order of the appellate authority, dated 17.06.2005, reads as hereunder:

THE SINGARENI COLLIERIES COMPANY LIMITED  
(A GOVERNMENT COMPANY)  
IR WING OF CORPORATE PERSONNEL DEPARTMENT

Ref.No.CRP/PER/IR/D/90/892

Date:17.06.2005

Sri Y. Venkateswar Rao,  
Emp.Code No.0164838,  
Clerk, Spl. Grade,  
Main Stores,  
Kothagudem.

THROUGH; CGM/MAIN STORES

I have for acknowledgment your appeal dt. 02.08.2004 requesting to revoke the penalty imposed on you and to stop recovery of amount. I have gone through the grounds/contentions raised in your Appeal against the order of penalty of reversion to a lower stage by reducing two increments in the present scale of pay with cumulative effect, passed by the disciplinary authority i.e., Director (P,A & W) w.e.f 01.06.2004. I have also gone through the enquiry proceedings and the report of the Enquiry Officer holding you guilty of charge of neglect of work under company's Standing Order No.25.5.

From the records it is noticed that it has been established in the enquiry that you were responsible for the pecuniary loss of Rs.93,357-33/- (Rupees Ninety three thousand three hundred fifty seven and thirty three paise only) caused to the company along with Sri Jeedi Ramesh, General

Mazdoor, Main Stores, which is a misconduct under Company Standing Order No.25.5. You have fully participated in the enquiry.

Though the punishment warranted is that of dismissal from Company's services, a lenient view has been taken and a lesser punishment of reversion to lower stage by reducing two increments in the present scale of pay with cumulative effect with effect from 01.06.2004 has been imposed on you.

As such, the penalty of reversion to a lower stage in the present scale of pay by reducing two increments with cumulative effect, with effect from 01.06.2004, imposed on you is justified in as much as the misconduct committed by you is grave under Company's Standing Order No.25.5.

In view of your misconduct along with Sri Jeedi Ramesh, General Mazdoor, Main Stores, KGM, Company has suffered a pecuniary loss of Rs.93,357-33/-(Rupees ninety three thousand three hundred fifty seven and thirty three paise only). It is therefore, decided to recover the above amount from you and Sri Jeedi Ramesh General Mazdoor, equally. Hence you are liable to pay an amount of Rs.46,679-67/- (Rupees forty six thousand six hundred seventy eight and sixty seven paise only)

I have also gone through your past record and found that there are no extenuating circumstances to reduce the penalty imposed on you, as requested by you.

For the reasons stated above, I confirm the penalty of reversion to a lower stage in the present scale of pay by reducing two increments with cumulative effect, imposed on you and recovery of amount of Rs.46,678-67/- (Rupees forty six thousand six hundred seventy eight and sixty seven paise only) from your salary vide office order No.CRP/PER/IR/D/90/1112, Dated 19.06.2004 of Director (P,A & W).

CHAIRMAN & MANAGING DIRECTOR

8. The grounds raised by the petitioner before the appellate authority had been placed before this Court and submissions at length were made by the respective counsel. Strong reliance was placed on the decision of the apex Court cited (1) supra, wherein it was observed as hereunder;

“35.Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must

record reasons for it; decision are of no less significance. These considerations show that the recording of reasons by an administrative authority serve a salutary purpose, namely, it exclude chances of arbitrariness and ensures a degree of fairness in the process of decisions-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

38. The object underlying the rules of natural justice “ is to prevent miscarriage of justice” and secure “fair play in action.” As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles, of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a

particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S. A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.

39. For the reasons aforesaid, it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision.

9. On a cursory glance of the grounds raised by the petitioner before the appellate authority and also the nature of the order, which was made by the appellate authority and which had been already referred to supra, this Court is satisfied that instead of considering the grounds raised by the writ petitioner, may be on the ground that a lenient view was taken by the original authority, the same had been confirmed. This approach adopted by the appellate authority cannot withstand the legal scrutiny.

10. In the light of the same, the impugned order is hereby quashed and the matter is remitted to the appellate authority to

reconsider the matter in the light of the grounds raised by the writ petitioner and dispose of the appeal in accordance with law, within a period of three months from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is allowed to the extent indicated above. No order as to costs.

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**P.S. NARAYANA, J**

Dated:16.11.2007

sj

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[\[1\]](#) AIR 1990 SUPREME COURT 1984